

(2004) 10 OHC CK 0013

In the Orissa High Court

Case No : Original Criminal Miscellaneous Case No. 492 of 2001 (Arising out of OJC No. 8433/97)

Pravu Charan Mohanty

APPELLANT

Vs

Sri Nimai Charan Swain

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (2004) 29 OCR 855 : (2004) 29 OCR 220 : (2004) 2 OLR 732

Hon'ble Judges : P.K. Tripathy, J; A.K. Samantray, J

Bench : Division Bench

Advocate : S. Ku. Das, S. Swain, S.R. Subudhi, R.C. Jena, for the Appellant; Standing Counsel for School and Mass Education, for the Respondent

Judgement

1. Heard learned Counsel for the petitioner and Mr. Behera, learned Standing Counsel for the School and Mass Education Department, Orissa, Bhubaneswar in as much as he has entered appearance for the said opposite party as appears from the counter affidavit.

2. Operative portion of the order dated 22.2.1999 which was passed in O.J.C. No. 8433 of 1997 reads as hereunder:

The petitioner came to be appointed in a trained Matric Post in Batamangala Bidyapitha with effect from 16.2.1974. He was promoted to trained Intermediate post with effect from 6.8.1980. The Managing Committee adjusted him against the 5th trained graduate post with effect from 14.12.1992.

The School in question is a 3-class High School and, as such, is entitled to five trained graduate posts out of which two must be from Arts stream and two must be from Science stream as per the yardstick prescribed by the Government in the year 1981. The Managing Committee adjusted the petitioner against a post earmarked for a Science trained graduate having C.B.Z. combination which is not permissible. The Inspector of Schools in letter No. 1080 dated 7.2.1994 has

recommended to the Director for upgradation of the T.I. post to T.G. post but no decision has yet been communicated.

Keeping in view the aforesaid facts, we dispose of this writ application by directing the Inspector of Schools to adjust the petitioner against a trained Arts graduate post in any other school within his circle and the petitioner will be entitled to trained graduate scale of pay from the date of adjustment as such. Necessary orders in this regard will be passed by the Inspector of Schools within four months of receipt of this order.

3. The opposite party has filed the show-cause stating that he disposed of the matter pursuant to the aforesaid direction of this Court and passed the order Annexure-B/1. It appears from Annexure-B/1 that the following consequential order was passed by the opposite party:

Further, after taking over the management of the aided schools by Govt. with effect from 7.6.94, the claim of the petitioner to allow T.G. scale of pay on adjustment against another T.C. post is devoid of any merit, because of the fact that, if the petitioner is allowed such scale, many senior teachers will be superseded. The petitioner can only get T.G. Scale of pay as per his seniority in the T.I. teachers cadre.

On a plain reading of the above quoted order of the opposite party a case of Contempt is made out in as much as such order was passed superseding and violating the direction issued by this Court.

4. Learned Standing Counsel wants to argue on merit justifying the said order, obviously with a view in challenging to the above quoted direction of this Court in O.J.C. No. 8433 of 1997. In a recent decision of the Apex Court reported in AIR 2004 SCW 4812 (State of Bihar and Ors. v. Rajendra Singh and Anr.) the Apex Court has cautioned that while dealing with Contempt Application there cannot be a departure from the decision and direction issued in the order whose violation is the subject matter of Contempt Proceeding. Their Lordships propounded that:

6. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practical nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

5. Therefore, there is no scope for us to go to the merit of the case and to find justification in the order, Annexure-B/1 which as noted above is in gross-violation of the above quoted order in O.J.C. No. 8433 of 1997. Prima facie being so satisfied about the contempt, we direct the opposite party to appear in person and to show-cause why he shall not be convicted and sentenced for committing the Contempt of Court. Learned Standing Counsel seek for an adjournment of six weeks to secure attendance of the opposite party and also to file his further show-cause, if any.

Hence, list this case six weeks after.

A free copy of this order may be supplied to the learned Standing Counsel for the School and Mass Education Department.